

# 17 - SAFEGUARDING CHILDREN REGULATIONS

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## THE ASSOCIATION'S SAFEGUARDING CHILDREN REGULATIONS

### PREAMBLE

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This Preamble is provided for guidance. If there is any inconsistency between the Preamble and the operative parts of the Safeguarding Children Regulations below, the operative parts shall prevail.

As set out in The Association's Safeguarding Children Policy, The Association is committed to safeguarding children within football and has Case Management procedures in place to assess the risk of harm that individuals may pose to children in football.

In assessing that risk, children's welfare is the paramount consideration.

Towards this, The Association has the power under the Safeguarding Children Regulations to issue an order where any one or more of the following applies:

- (i) The individual fails to comply with any part of The Association's Criminal Records Check (CRC) process;
- (ii) The individual has been barred by the Independent Safeguarding Authority (ISA) or the Disclosure and Barring Service (DBS) from engaging in regulated activity relating to children;
- (iii) The individual has been disqualified from working with children under the Criminal Justice and Court Services Act 2000;
- (iv) The individual is subject to any other restriction on their involvement with children not within (ii) or (iii) made pursuant to statute;
- (v) The individual has been convicted of, or made the subject of a caution for, an "Offence" defined in Regulation 1.1; or
- (vi) Following a risk assessment, The Association is satisfied that the individual poses or may pose a risk of harm to children; or
- (vii) Following a risk assessment, The Association is satisfied that the individual is or was in a position of trust in relation to another person and has engaged in sexual activity and/or an inappropriate relationship with that person.

### GENERAL

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- 1 1.1 In these Regulations the expression "Offence" shall mean any one or more of the offences contained in the Schedules of the Criminal Justice and Court Services Act 2000 and any other criminal offence which reasonably causes The Association to believe that the person accused of the offence poses or may pose a risk of harm to a child or children.

The expression "position of trust" shall mean any position where an individual is in a relationship of trust with any person with responsibility and / or authority in relation to that person, and shall include without limitation those who care for, advise, supervise, train, coach, teach, manage, tutor, mentor, assess, develop, guide, treat or provide therapy to children and young people.

- 1.2 The Safeguarding Review Panel shall determine its own procedures save that in making findings of fact the test that the Safeguarding Review Panel shall apply shall be the civil standard of the balance of probability. Where a case is referred to the Safeguarding Review Panel pursuant to these Regulations it shall have the discretion to depart from the procedures set out in these Regulations where it considers it appropriate to do so.
- 1.3 The actions that may be taken under these Regulations by a Case Manager may also be taken by the Case Manager's nominee.

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- 1.4 The Association may notify other parties of the terms of any order imposed under these Regulations where the Case Manager considers that such notification is appropriate in order to give effect to the terms of the order.
- 1.5 Where urgent cases arise under these Regulations the Chairman of the Safeguarding Review Panel may exercise the functions and powers of the Case Manager and/or the Safeguarding Review Panel, as provided for by these Regulations, on an interim basis. An interim decision taken by the Chairman of the Safeguarding Review Panel shall not be final until such time as it has been ratified by the Safeguarding Review Panel, which shall have the right to ratify, modify or make any other order as it considers appropriate in relation to the decision taken by the Chairman of the Safeguarding Review Panel.
- 1.6 A Participant must immediately report to The Association any alleged incident, facts or matters regarding potential abuse or harm against a child, or any sexual offence against anyone (whether an adult or child). Any failure to do so may amount to Misconduct.

### THE ASSOCIATION'S SAFEGUARDING PROCESS

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2. Any person, regardless of their age, applying for or currently in such a position that The Association in its discretion considers relevant must comply with the requirements of The Association's Safeguarding process.

Such persons will include but not be limited to:

- (i) Those in "Regulated Activity" as defined in Part V of the Protection of Freedoms Act 2012. An individual will fall within the definition where:
  - (a) his/her duties include teaching, training, instructing, caring for, supervising or providing guidance or advice on wellbeing to Children or driving a vehicle (on behalf of an organisation) only for Children; and
  - (b) such duties happen frequently (e.g. once a week or more often) or intensively (e.g. on 4 or more days in a 30 day period, or overnight); and
  - (c) The individual carrying out any of the duties described in (a) and (b) above is unsupervised.

Any person falling within this Regulation 2(i) shall be referred to as a "Regulated Activity Person"; and

- (ii) Those who would otherwise fall within the definition of a Regulated Activity Person but for the fact that their duties are supervised (a "Supervised Person").

The requirements of The Association's Safeguarding process are:

- 2.1
  - (a) In respect of a Regulated Activity Person, to obtain and provide to The Association a DBS Enhanced Criminal Records Check with Children's Barred List
  - (b) In respect of a Supervised Person, to obtain and provide to The Association a DBS Enhanced Criminal Records Check
- 2.2 To provide any such further detail, explanation or clarification of any part of the matters disclosed pursuant to Regulation 2.1 (a) or (b) above, as may be required by The Association;
- 2.3 To comply with any other request or requirement which may assist The Association in progressing or completing any investigation, risk assessment or other enquiry as part of the Safeguarding process;
- 2.4 Where required, to provide at least two references that attest to their suitability to be involved in youth football. The spouse or partner of the person subject to this requirement cannot act as a referee for this purpose. Any reference provided by a spouse or partner will not be accepted; and
- 2.5 To comply with each of the requirements set out in Regulations 2.1 – 2.4 within any such time limit as The Association may stipulate.

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- 2.6 To comply with any order imposed by the Safeguarding Review Panel.

Any person who fails to comply with any of the requirements set out in Regulation 2 shall be subject to an immediate suspension from football activity, on such terms and/or for such period as The Association may stipulate.

Where an individual is subject to a suspension under Regulation 2.6, that suspension will remain effective (and not subject to any review by The Association) until such time as:

- (i) The individual successfully appeals against their suspension pursuant to Regulation 5; or
- (ii) The individual complies with the requirements set out in Regulation 2 that resulted in his or her suspension.

Any requirement under this Regulation 2, or any suspension arising from any failure to comply with any of the requirements of this Regulation, shall apply whether or not a person withdraws their application or ceases to hold the relevant position at any time before, during or after the investigation, risk assessment or final order of the Safeguarding Review Panel.

### INTERIM ORDERS

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3. Upon receipt by The Association of:

- 3.1 Notification that an individual has been charged with an Offence;
- 3.2 Notification that an individual is the subject of an investigation by the Police, Children's Services or any other authority relating to an Offence; or
- 3.3 Any other information which causes The Association reasonably to believe that a person poses or may pose a risk of harm to a child or children,

The Association shall have the power to make any interim order including, but not limited to, issuing an interim suspension order suspending the individual from all or any specific football activity for such a period and on such terms and conditions as it considers appropriate. Interim orders shall be issued by the Case Manager, who shall provide the individual with written notification of the interim order, the reason(s) for its imposition and of the right of appeal pursuant to Regulation 6.

4. 4.1 In determining whether an order under Regulation 3 should be made, the Case Manager shall give consideration, inter alia, to the following factors:

- 4.1.1 Whether a child is or children are or may be at risk of harm;
- 4.1.2 Whether the matters are of a serious nature; and/or
- 4.1.3 Whether an order is necessary or desirable to allow the conduct of any investigation by The Association or any other authority or body to proceed unimpeded having regard to the need for any suspension order to be proportionate.

If the Association believes it requires further information from an individual in order to assess whether an order under Regulation 3 should be made and/or to properly assess the factors in Regulation 4.1, the Case Manager may request further information from that individual. Such information must be provided in accordance with the deadline set by the Case Manager.

- 4.2 The Case Manager will notify the individual in writing of the terms of any interim suspension order or other interim order, such notification to be sent by registered post to the individual's usual or last known address.

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5. An individual who is subject to an interim order under Regulation 3 or under Regulation 2.6 shall have the immediate right to appeal the interim order. The right to appeal may be exercised at any time during the period covered by the interim order. Where an individual exercises their right to appeal, they shall have no further right to appeal the interim order save for where, following a review under Regulation 11, the Safeguarding Review Panel makes a material and more onerous change to the interim order (either by way of modification of the original interim order or by making another order).
6. Appeals under Regulation 5 shall be considered by the Safeguarding Review Panel.
7. To bring an appeal under Regulation 5, the individual as the appellant, must give notice in writing to The FA Judicial Services Department with a copy sent to the Case Manager. The notice must request an appeal and state the grounds for that appeal. The appellant may submit any written material in support of the appeal. Such material must be submitted to The Association, as the respondent, and the Safeguarding Review Panel within 14 days of giving such notice or it may not be considered by the Safeguarding Review Panel. Following the earliest of (a) receipt by The Association of any such material in support of the appeal, (b) the end of the 14 day period to provide such material, or (c) receipt of confirmation from appellant that no such material will be provided, The Association, as the respondent, may submit any material which it relies on, to the appellant and the Safeguarding Review Panel within 14 days thereafter.
8. The Safeguarding Review Panel shall determine all procedural matters for the conduct of the appeal, including requiring more information from either the appellant or the respondent. Unless the Safeguarding Review Panel in its discretion exceptionally allows the appellant and the respondent to address it in person, the Safeguarding Review Panel shall only consider the written material submitted by the appellant in support of the appeal, together with any written material submitted by the respondent. In exercising its discretion as to whether exceptionally to allow the individual and the Case Manager to address it in person (whether through a representative or otherwise), whether that be as a result of the application made by the appellant or otherwise, the Safeguarding Review Panel shall give consideration to the following reasons (which is not an exhaustive list):
  - 8.1 Whether the terms of any order under consideration would affect the individual's paid employment within football, in which case, the appellant shall be entitled to address the Safeguarding Review Panel in person; and/or
  - 8.2 Whether exceptional material is put before the Safeguarding Review Panel.
9. In determining an appeal, the Safeguarding Review Panel shall have the power to make any order in relation to the interim order as it considers appropriate, including ratifying, modifying or removing it.
10. Any appeal under Regulation 5 shall be determined by the Safeguarding Review Panel at the earliest opportunity, following the receipt of notice in writing and any written material in support of the appeal from the appellant and written material submitted by the respondent (and, in cases where the individual and Case Manager were permitted to address it in person, following any oral hearing).
11. All interim orders will be reviewed at the first opportunity following the expiry of 6 months from the date of the order being imposed or, if that order has been appealed under Regulation 5, the date upon which that appeal is determined (whether on the written papers or following an oral hearing), and at the same interval thereafter. The Safeguarding Review Panel will not review an interim order before the expiry of the relevant 6 month period except in exceptional circumstances and/or where there is a material change in the circumstances in which the order was made. Any review under Regulation 11 shall not be considered by the Safeguarding Review Panel which conducted an appeal in the same case under Regulation 5. The Safeguarding Review Panel may maintain, modify, or remove any interim order, or make any other order it considers appropriate.
12. The total period of an interim order under Regulation 3 shall not last beyond the final determination of any related case under the Rules of the Association. Where an interim order is imposed on an individual under Regulation 3 above, The Association shall bring and conclude any proceedings under the Rules of The Association against the person relating to the matters as soon as reasonably practicable.

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### **DETERMINATION FOLLOWING ANY ORDER MADE PURSUANT TO STATUTE BARRING OR RESTRICTING INVOLVEMENT WITH CHILDREN**

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13. 13.1 Where any individual is:
- 13.1.1 Barred from regulated activity relating to children in accordance with section 3 of the Safeguarding Vulnerable Groups Act 2006 (as may be amended);
  - 13.1.2 Disqualified from working with children in accordance with section 35 of the Criminal Justice and Court Services Act 2000; and/or
  - 13.1.3 Subject to any other order, not within Regulations 13.1.1 or 13.1.2, issued pursuant to statute restricting their involvement with children,
- The Association shall have the power to make any order, including but not limited to an order that any individual be suspended from all or any specific football activity for such period and on such terms and conditions as it considers appropriate. Any such order shall be issued by the Case Manager.
- 13.2 All such orders shall be reviewed at the next meeting of the Safeguarding Review Panel. The Safeguarding Review Panel may ratify, modify or remove any such order, or make any other order as it considers appropriate.

### **ORDER FOLLOWING CONVICTION OR CAUTION**

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14. 14.1 Where the Case Manager becomes aware that an individual has a caution or conviction which leads to a concern about that individual's continued participation in football activity involving a child or children, the Case Manager may refer a case to the Safeguarding Review Panel in order to seek an order under Regulation 14.
- 14.2 The Association's Safeguarding Review Panel shall have the power to make any order in respect of any individual convicted of, or made the subject of a caution in respect of, an Offence, including but not limited to a suspension from all or any specific football activity for such period and on such terms and conditions as it considers appropriate.

### **OTHER ORDERS**

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15. In addition to The Association's powers under Regulations 2.6, 3, and 13, where the Case Manager has reasonable cause to suspect that there are grounds for concern about an individual's continued participation in football activity involving a child or children, the Case Manager may refer a case to the Safeguarding Review Panel in order to seek an order under Regulation 15.

Following such a referral, the Safeguarding Review Panel shall have the power to make any order that it considers appropriate, including but not limited to an order that any individual be suspended from all or any specific football activity for such period and on such terms and conditions as it considers appropriate, if it is satisfied that the individual poses or may pose a risk of harm to a child or children and/or that the individual is or was in a position of trust in relation to any person and has engaged in sexual activity and/or an inappropriate relationship with that person.

### **RISK ASSESSMENTS**

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16. The Case Manager may conduct a risk assessment of an individual's participation in football following any order or referral made under Regulation 13, 14 or 15. This risk assessment may be in such form and prepared by any person, as the Case Manager, at his/her discretion, considers appropriate.

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### PROCEDURE

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17. Before an order or referral is made under Regulation 13, 14 or 15, the Case Manager must use reasonable endeavours to notify the individual in writing. Such written notification must explain the order sought and the reason for it, and include a copy of the risk assessment and all other written material that the Case Manager intends to rely upon in seeking the order, save for any exceptional material dealt with under Regulation 24.
18. The individual shall have 14 days to reply to this notification and to provide any written material that he/she wishes the Safeguarding Review Panel to take into account in considering whether or not to impose, ratify, modify or remove any order under Regulation 13, 14 or 15.
19. Following the receipt of the reply and/or other written material from the individual, or the expiry of the 14 day period if no reply is received, the Case Manager may:
  - 19.1 Decide that no further action is currently required as there are no longer grounds for an order or referral under Regulation 13, 14 or 15;
  - 19.2 Make any such further inquiries as he or she considers appropriate in light of any matters raised by the individual in response to the written notification; or
  - 19.3 Refer the case to the Safeguarding Review Panel.
20. Where further inquiries are made by the Case Manager, any written material arising from those inquiries may only be relied on by the Case Manager if that written material has been sent to the individual and he or she has had 14 days to reply to it, save for any exceptional material dealt with under Regulation 24. If the written material is relied upon, any response by the individual must also be considered by the Safeguarding Review Panel.
21. A Safeguarding Review Panel may issue such further order, requirement, or instruction as it considers appropriate for the purpose of giving effect to its decision.
22. The Safeguarding Review Panel shall determine all procedural matters for the conduct of a case it is considering under Regulation 13, 14 or 15. Unless the Safeguarding Review Panel in its discretion exceptionally allows the individual and the Case Manager to address it in person, the case shall be considered on the basis of the following written material only:
  - 22.1 The written notification and all written material provided with it by the Case Manager to the individual;
  - 22.2 The reply, if any, and all other written material submitted by the individual in response to the written notification;
  - 22.3 Any further written material provided by the Case Manager to the individual subsequently to the written notification; and
  - 22.4 Any response from the individual to such further written material and all other written material submitted with that response.
23. In exercising its discretion as to whether exceptionally to allow the individual and the Case Manager to address it in person, whether that be as a result of an application made by either party or otherwise, the Safeguarding Review Panel shall give consideration, *inter alia*, to the following factors:
  - 23.1 Whether the terms of any order under consideration would affect the individual's paid employment within football in which case the individual shall be entitled to address the Safeguarding Review Panel in person;
  - 23.2 Whether exceptional material is to be put before the Safeguarding Review Panel; and/or
  - 23.3 Whether an oral hearing has previously been conducted pursuant to Regulation 9 in relation to the same matter.

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### EXCEPTIONAL MATERIAL

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24. 24.1 In considering an interim order under Regulation 5, a review of any interim order under Regulation 11, or whether or not to make any order under Regulation 15, as a general rule the Safeguarding Review Panel may not consider any material provided by either the Case Manager or the individual which the other party has not seen and had a reasonable opportunity to reply to.
- 24.2 Exceptionally, in respect of any of the matters set out at Regulation 24.1, the Case Manager may make an application to an Exceptional Material Panel for permission to submit material to the Safeguarding Review Panel that has not been sent to the individual ("exceptional material"), where the Case Manager considers that the exceptional material concerned should not be sent to the individual for any one or more of the following reasons:–
- 24.2.1 Revealing it to the individual may create a risk of harm to any person or persons, and/or
- 24.2.2 Revealing it to the individual may amount to a criminal offence or otherwise be unlawful.
- 24.3 Where the Case Manager makes an application to an Exceptional Material Panel for permission to submit exceptional material to the Safeguarding Review Panel under Regulation 24.2 above, the Case Manager shall give notice of the application to the individual in writing at least fourteen days before the Exceptional Material Panel considers the application, unless the Case Manager considers that such written notice should not be given, as to give such notice may in itself:
- 24.3.1 Create a risk of harm to any person or persons; and/or
- 24.3.2 Amount to a criminal offence or otherwise be unlawful.
- 24.4 Any reply by an individual to a notice referred to in Regulation 24.3 must be passed to the Exceptional Material Panel for consideration.
- 24.5 The Exceptional Material Panel may, at its discretion, allow or reject the application in whole or in part.
- 24.6 In the event that the Exceptional Material Panel grants an order allowing the exceptional material to be submitted to the Safeguarding Review Panel, the Exceptional Material Panel shall give consideration as to whether either or both of the following may be provided to the individual:
- 24.6.1 A redacted version of the exceptional material; and/or
- 24.6.2 A summary of the exceptional material.
- 24.7 An Exceptional Material Panel shall be made up of one or more of the members of the Safeguarding Review Panel. A person that sits on an Exceptional Material Panel determining an application under Regulation 24.2 in relation to a particular individual may not be a member of the Safeguarding Review Panel that will have conduct of the case referred under Regulation 15 in relation to that individual.

### SUPERVISION ORDERS

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25. Unless otherwise discharged, a Supervision Order will last for the length of time ordered by the Panel. Before its expiry, The Association may apply for an extension, or further extensions, for a period not exceeding 3 years from the date of the first order.

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### DISCRETION TO REFER TO THE SAFEGUARDING REVIEW PANEL

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26. Any of the powers and/or case management functions exercised by a Case Manager under these Regulations may instead be exercised by the Safeguarding Review Panel if the Case Manager, in his or her sole discretion, determines that the matter should be referred to the Safeguarding Review Panel (“a general referral”). The Case Manager shall make a general referral to the Safeguarding Review Panel where the facts and circumstances of a case are exceptional and/or of significant public interest, though the Case Manager’s discretion to make a general referral will not be limited to such cases.
27. Where the Case Manager makes a general referral to the Safeguarding Review Panel, the same rights of review and appeal arise as if the decision of the Safeguarding Review Panel had been made by the Case Manager. Any review or appeal of the decisions of the latter will be heard by a Safeguarding Review Panel, none of the members of which shall have been a member of the Safeguarding Review Panel which was involved in any earlier decision on that case.

### RIGHT OF APPEAL

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28. 28.1 A Participant or The Association may appeal to an Appeal Board any decision of the Safeguarding Review Panel made under Regulations 13.1.3, 14 or 15. Subject to Regulation 28.3 and 28.4, such appeals shall be conducted in accordance with Part C: Appeals Non-Fast-Track of the Disciplinary Regulations (“Appeal Regulations”). Subject to this right of appeal, decisions of the Safeguarding Review Panel shall be final and binding.
- 28.2 Notwithstanding any provision to the contrary in the Appeal Regulations, an Appeal Board convened to hear an appeal pursuant to Regulation 28.1 shall take place as a full rehearing of the case.
- 28.3 Paragraph 10 of the Appeal Regulations shall be replaced with the following: “The Appeal Board shall hear new evidence only where it has given leave that it may be presented. An application for leave to present new evidence must be made in the Notice of Appeal or the Response. Such application must set out the nature and the relevance of the new evidence, and why it was not presented at the original hearing. The Appeal Board shall not grant leave to present new evidence unless satisfied with the reason given as to why it was not, or could not have been, presented at the original hearing and that such evidence is relevant. The Appeal Board’s decision shall be final. Where leave to present new evidence has been granted, in all cases the other party will be given an opportunity to respond”
- 28.4 Any decision of the Appeal Board shall be final and binding with no further right of appeal.

### WRITTEN MATERIAL

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29. For the purposes of these Regulations, “written material” may include photographic, video, electronic and/or audio evidence.